

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 172 OF 2023

Sandeep Govind Pawar,
Age : 32 years, Occu : Labourer,
R/o - Yehlegaon (T), Tq. Kalamnuri,
District – Hingoli
At present District Central Jail, Parbhani

.. Petitioner / Detenue

Versus

1] State of Maharashtra

Through its Additional Chief Secretary,
Home Department (Special), Mantralaya,
Mumbai - 400 032

2] The Collector and District Magistrate,
Hingoli

3] The Collector and District Magistrate,
Parbhani

.. Respondents

...

Mr. Shaikh Ashraf Patel, Advocate h/f. Mr. Shaikh Abid, Advocate for the
petitioner

Mrs. M.A. Deshpande, Addl. P.P. for the respondent - State

...

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 3 APRIL 2023

JUDGMENT (MANGESH S. PATIL, J.)

Heard.

2. Rule. Rule is made returnable forthwith. Learned Addl. P.P. waives service for all the respondents. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. Invoking the powers of this Court under Articles 226 and 227 of the Constitution of India, the petitioner is impugning the

detention order no. 2022 DC-1/KAVI-485/2022/2531 dated 22-11-2022 passed by the respondent no. 2 - District Magistrate under section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred as **MPDA Act**) and confirmed by the State government under section 3(2) on 06-01-2023.

4. The grounds of detention were supplied to the petitioner as contemplated under section 8 of the MPDA Act on the same day of the order of detention i.e. 22-11-2022. It was mentioned in these grounds that he was a known and habitual bootlegger in the area of Akhada Balapur Police station and was engaged in transportation and selling of Gavthi (Taddi) in contravention of the provisions of the Maharashtra Prohibition Act, 1949 (hereinafter referred as **Prohibition Act**). He would beat up people opposing business and due to fear and terror created by him, people were not coming forward to report the matter. As many as 10 crimes were registered against him under section 65E or 65F of the Prohibition Act. In recent past crime nos. 501 of 2022 dated 05-11-2022 and 511 of 2022 dated 09-11-2022 have been registered and investigation in which was going on and the rest of the cases were pending before the Court. Apart therefrom, there were two instances of chapter cases wherein action was taken under section 93

of the Prohibition Act and he was called upon to furnish the bond. It was also informed that samples in all the cases under the Prohibition Act was containing ethyl alcohol in excessive amount which was harmful to the human body. The statements of couple of witnesses were recorded in-camera and those were verified through the Sub Divisional Police officer, before respondent no. 2 - District Magistrate formed a subjective opinion that the activities of petitioner were prejudicial to the public order.

5. The petitioner presented representation on 28-11-2022 which was presented before the advisory board. The detention order was approved by the State government on 29-11-2022. The advisory board heard the petitioner on 15-12-2022 and submitted its report to the State government which confirmed petitioner's detention on 06-01-2023.

6. Learned advocate for the petitioner challenges the order of detention on following grounds:-

- (i) The order does not stipulate the period of detention which goes to the root of its validity and it is contrary to the decision in the matter of *Lahu Shrirang Gatkhal Vs. State of Maharashtra through the Secretary and others; (2017) 13 SCC 519*.

- (ii) The order of detention refers to couple of recent instances of registration of offences under section 65E of the Prohibition Act which are stated to be under investigation. In rest of the crimes relied upon by the District Magistrate trials have been stopped under section 258 of the Code of Criminal Procedure which, therefore, cannot form the basis to reach the subjective satisfaction.
- (iii) The opinion formed by the District Magistrate does not indicate as to how the common law provisions are insufficient to deter the petitioner from disturbing the public order.
- (iv) Except the offences under section 65E and 65F of the Prohibition Act, he has not been involved in any offences against human body or property.
- (v) Through the recent two crimes bearing no. 501 of 2022 and 511 of 2022 have been registered, the petitioner has not been arrested and was merely served with a notice under section 41 and relies upon decisions of this Court in the matters of *Prashant Bharat Datar Vs. State of Maharashtra and another* (Criminal Writ Petition no. 914 of 2021 - Nagpur Bench) dated 07-07-2022 and *Devidas Lalji*

Ade Vs. The State of Maharashtra and others (Criminal Writ Petition no. 469 of 2022) (Aurangabad Bench) dated 13-07-2022.

- (vi) The copies of the statements of witnesses recorded in-camera were not provided to the petitioner which has deprived him of making an effective representation under Article 22(5) of the Constitution of India.
- (vii) The statements of the witnesses recorded in-camera are vague. One of them states that the incident of the petitioner's selling illicit liquor had occurred in the year 2020 during lockdown. The other witness does not even mention the year or the date.
- (viii) The District Magistrate has not applied its mind and has not reached subjective satisfaction independently.

7. The learned Addl. PP referring to the affidavit in reply filed by the respondent no. 2 – District Magistrate supports the order. She submits that the order of detention is passed on the subjective satisfaction reached by him based on all the facts and circumstances. Couple of witnesses have come forward to record their statements but due to the fear of the petitioner, their statements could be recorded in-camera. The extract of the statements have been reproduced in

verbatim in the grounds which were supplied to the petitioner and there is no deprivation of right to make a representation under Article 22(5) of the Constitution of India. The petitioner was detained on 22-11-2022 and was duly served with the grounds on the same day. The order was duly approved by the State government on 29-11-2022. The petitioner availed of the opportunity to make a representation which was considered by the advisory board and opportunity of being heard was extended to him on 15-12-2022 and the order of detention has been confirmed on 06-01-2023 by rejecting the petitioner's representation.

8. She would also submit that the preventive action under section 93 of the Prohibition Act was also taken against the petitioner and the very fact that in spite of registration of so many crimes under the Prohibition Act, he has not desisted from repeating the acts, is indicative of his being a bootlegger and his being at large is certain to cause prejudice to the public order.

9. Lastly, she would submit that three Judge Bench decision of the Supreme Court in the matter of *T. Devaki Vs. Government of Tamil Nadu and others*; (1990) 2 SCC 456 has elaborately considered the issue regarding absence of specific mention of period of detention under a similar provision contained in the The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas,

Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 (hereinafter referred to as **Tamil Nadu Act**). She would submit that the view taken by the two Judge bench of the Supreme Court in the matter of Commissioner of Police Vs. *Gurbux Anandram Bhiryani*; 1988 (Supp) SCC 568 on the interpretation of section 3 of the MPDA Act was held to be incorrect. It was not necessary for the detaining authority or the State government to specify the period of detention in the order. If no period is mentioned in the order, the detention would be for maximum period prescribed under the MPDA Act but it was always open for the State government to modify or revoke the order even before the completion of the period.

10. We have carefully considered the rival submissions and perused the papers.

11. So far as the absence of any mention of the period in the order of detention, it is pertinent to note that indeed, in the matter of *Lahu Shrirang Gatkai* (supra), while considering the case under the MPDA Act, it has been held that a blanket order of detention passed under section 3(1) and 3(2) without specifying the period of detention was invalid. However, as has been submitted by the learned APP, it is a decision rendered by the bench of two judges whereas *T. Devaki* (supra) was decided by the bench comprising of three judges of the Supreme Court. *T. Devaki* (supra) expressly examined the provisions

of section 3 of the MPDA Act and also disagreed with the view taken in the matter of *Gurbux Bhiryani* (supra) and emphatically held that it was not necessary to mention period of detention in the order of detention passed under section 3 of the MPDA Act. Conspicuously, there is no reference to the decision in the matter of *T. Devaki* (supra) in the case of *Lahu Shrirang Gatkai* (supra). It would therefore be safe to proceed on the premise that as laid down in the case of *T. Devaki* (supra), the impugned order of detention in the matter in hand cannot be said to be illegal on the ground that it does not prescribe the period of detention.

12. It is imperative for the detaining authority to reach a subjective satisfaction about the fact that the detenue being at large would be prejudicial to the public order. Admittedly, except registration of offences under the Prohibition Act, no offence has ever been registered against the petitioner under the Indian Penal Code or any other penal law. The fact that except the latest two cases in all earlier matters, the criminal cases have been stopped under section 258 of the Code of Criminal Procedure makes it necessary to consider as to if mere registration of the latest two offences under section 65E of the Prohibition Act coupled with couple of actions under section 93 of the Prohibition Act of securing bonds from petitioner can be said to be sufficient to reach a subjective satisfaction regarding petitioner being at liberty would cause disturbance to public order. Similarly, it becomes

imperative for the State to demonstrate that the provisions of the common law are insufficient to deter him from engaging him in the activities which would be prejudicial to the public order.

13. The fact that the petitioner has not been arrested in the latest two crimes and was merely served with a notice under section 41 is indicative, as has been consistently held by this Court in the matters of *Prashant Bharat Datar* and *Devidas Lalji Ade* (supra), latter of which was rendered relying upon the decision in the matter of *Mallada K Sri Ram Vs. State of Telangana and others*; 2022 SCC Online SC 424, that the Investigating Officer did not feel it necessary to arrest the petitioner – detinue and was satisfied in serving with notice under section 41A(1) of the Code of Criminal Procedure is indicative of the fact that his being at large may not be prejudicial to the public order.

14. So far as the preventive action under section 93 of the Prohibition Act is concerned, it merely requires the execution of bond as a security and there are no allegations about any breach of the condition or initiation of action pursuant to any breach.

15. So far as the statements of the witnesses are concerned, again as was the matter in *Devidas Lalji Ade* (supra), their statements are vague. One of them vaguely refers to the incident of the year 2020 during lockdown and the other witness does not even roughly describe

the date or year. Both these witnesses have been vaguely stating that the petitioner is engaged in manufacturing and sale of gavthi liquor. Common people are getting habituated to drinking and when the villagers advised him to stop the activities, he had threatened them.

16. As is mentioned herein-above, not even a single offence has ever been registered against the petitioner under the Indian Penal Code. Not even any report of previous incident of threatening was lodged by anybody. Statements of these witnesses were got verified from a subordinate officer but there is nothing in the grounds furnished to the petitioner by the District Magistrate to demonstrate as to if he has independently verified genuineness of the statements which has also been consistently held to go to the root of the validity of such orders.

17. In view of above state of affairs, we have no hesitation in concluding that the subjective satisfaction stated to have been reached by the respondent – District Magistrate is not an intelligible decision, and the circumstances are not sufficient enough to indicate that the personal liberty of the petitioner can be curtailed by such draconian law of preventive detention.

18. There is one more aspect. As has been mentioned in the matter of *T. Devaki* (supra) in paragraph no. 9 and 10, the provisions of

the preventive detention laws like MPDA Act lay down a specific timeline which has to be strictly followed. The paragraphs read as under:-

"9. Section 3 (3) requires that where detention is made by the delegate of the State Government, namely, the District Magistrate or the Commissioner of Police, they should report the fact to the State Government together with the grounds on which the order may have been made and such other particulars as, in their opinion, may have a bearing on the matter. A detention order made by a District Magistrate or Commissioner of Police in exercise of their delegated authority does not remain in force for more than twelve days after the making thereof, unless in the meantime the detention order is approved by the State Government. Section 8 requires the detaining authority to communicate to the detenu, grounds on which, the order is made within five days from the date of detention to enable the detenu to make representation against the order to the State Government. Section 10 requires the State Government to place before the Advisory Board the detention order and the grounds on which such order may have been made along with the representation made by the detenu as well as the report of the officers made under Section 3(3) of the Act within three weeks from the date of detention. Under Section 11 the Advisory Board is required to consider the materials placed before it and after hearing the detenu, to submit its report to the State Government within seven weeks from the date of detention of the person concerned. In a case where the Advisory Board forms opinion, that there was no sufficient cause for the detention the State Government shall revoke the detention order but if in its opinion sufficient cause was made out, the State Government may confirm the detention order and continue the detention of the person concerned for such period not exceeding the maximum period as specified in Section 13 of the Act. Section 13 provides the maximum period for which a person can be detained in pursuance of any detention order made and confirmed under the Act. According to this provision the maximum period of detention shall be twelve months from the date of detention. The State Government has, however, power to revoke detention order at any time, it may think proper.

10. Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the

order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained can not exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order" occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The legislature has taken care to entrust the power of detention to the State Government, as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification."

As is mentioned herein-above, it has also been observed by the Supreme Court that the provisions of section 3 of the MPDA Act are identical in terms of section 3 of the Tamil Nadu Act. The above observations clearly lay down that if the time frame as prescribed is not adhered to, the detention order is liable to be struck down.

19. The affidavit-in-reply specifically mentions that the order of detention was passed by the District Magistrate on 22-11-2022. It was served to the petitioner on the same day and he was detained in the

Central Prison, Parbhani. The grounds of detention were served to the petitioner on 23-11-2022 and the order was approved by the State government on 29-11-2022 which demonstrate that the timeline prescribed under section 3 and 8 has been followed. However, under section 10, it is mandatory to place the order of detention passed by the District Magistrate and confirmed by the State government before the advisory board within three weeks from the date of detention. The learned APP expressly admitted on the basis of the instructions that the detention order together with the petitioner's representation was placed before the advisory board on 15-12-2022 whereas he was detained from 22-11-2022 i.e. beyond 3 weeks from the date of detention. Therefore, there is a clear breach of time frame stipulated under section 10 of the MPDA Act and renders the detention order void.

20. Criminal Writ petition is allowed.

21. If the petitioner is not required in any other case, he shall be released forthwith.

22. Rule is made absolute.

[ABHAY S. WAGHWASE]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE